

United States District Court
Central District of California

FABRIC SELECTIONS, INC.,
Plaintiff,

v.

MANJEET INTERNATIONAL, INC.;
UNION APPAREL GROUP, LTD.; and
DOES 1 through 10, inclusive,
Defendants.

Case № 2:17-cv-02353-ODW (KS)

**ORDER DENYING MOTION FOR
DEFAULT JUDGMENT [17]**

I. INTRODUCTION

This is a fabric copyright case. Before the Court is Plaintiff Fabric Selection, Inc.’s motion for default judgment against Defendant Manjeet International, Inc. (ECF No. 17.) For the following reasons, the Court **DENIES** the motion.¹

II. FACTUAL BACKGROUND

Plaintiff is a Los Angeles-based fabric designer. (Compl. ¶ 1, ECF No. 1.) Defendant Manjeet International, Inc. (“Manjeet”) is an “importer and/or wholesaler of apparel in the business of selling garments and apparel to retailers/distributors.”

¹ After considering the moving papers, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 (*Id.* ¶ 2.) Defendant Union Apparel Inc. (“Union”) is in essentially the same business
2 as Manjeet. (*Id.* ¶ 3.)

3 Plaintiff designed the relevant SE41092 fabric pattern and subsequently
4 registered the pattern with the United States Copyright Office. (*Id.* ¶¶ 9, 10.) At some
5 point, Plaintiff discovered that Union and Manjeet (collectively “Defendants”) were
6 distributing goods featuring the pattern without authorization. (*Id.* ¶ 15.) Plaintiff
7 sent cease and desist letters to Defendants on September 20, 2016, demanding that
8 they discontinue their unauthorized manufacture, sale, and distribution of goods
9 featuring the infringing pattern. (*Id.*) Defendants did not cease their activities. (*Id.*
10 ¶¶ 18, 27.)

11 Plaintiff filed this lawsuit against Defendants on March 27, 2017, alleging (1)
12 copyright infringement and (2) contributory copyright infringement. (*Id.* ¶¶ 11–30.)
13 On May 1, 2017, the Clerk of Court entered default against Manjeet at Plaintiff’s
14 request. (ECF No. 15.) On May 8, 2017, Plaintiff filed the pending motion for
15 default judgment with the Court. (ECF No. 17.)

16 Attached to Plaintiff’s motion for default judgment is a declaration from
17 Plaintiff’s attorney Stacy Knox attempting to clarify the roles that Union and Manjeet
18 played in the infringing activity. (*See* Knox Decl., ECF No. 17.) According to the
19 declaration, Knox spoke to Edison Wong, a Union representative, who indicated that
20 Union had “received additional, unauthorized units . . . of garments bearing the
21 Subject Design from Manjeet.” (*Id.* ¶ 3.) Knox then spoke with Sudeep Kaur, a
22 Manjeet representative, who confirmed that Manjeet manufactured the goods in
23 question. (*Id.* ¶ 4.) Kaur stated that Manjeet manufactured the goods at Union’s
24 request, believing that Union “owned” the pattern. (*Id.*)

25 **III. LEGAL STANDARD**

26 Federal Rule of Civil Procedure 55(b) authorizes a district court to enter a
27 default judgment following an entry of default by the clerk against a defendant that
28 fails to respond to a complaint. A district court has discretion as to whether to enter a

1 default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Upon
2 default, the defendant's liability generally is conclusively established, and well-
3 pleaded factual allegations in the complaint are accepted as true. *TeleVideo Sys., Inc.*
4 *v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987) (per curiam) (citing *Geddes v.*
5 *United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)).

6 In exercising its discretion, a court must consider several factors, including (1)
7 the possibility of prejudice to plaintiff; (2) the merits of plaintiff's substantive claim;
8 (3) the sufficiency of the complaint; (4) the sum of money at stake; (5) the possibility
9 of a dispute concerning material facts; (6) whether the defendant's default was due to
10 excusable neglect; and (7) the strong policy favoring decisions on the merits. *Eitel v.*
11 *McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

12 IV. DISCUSSION

13 Since the Supreme Court's decision in *Frow v. De La Vega*, 82 U.S. 552 (1872)
14 more than one hundred years ago, courts have consistently held that where "a
15 complaint alleges [that the] defendants are jointly liable and one of them defaults,
16 judgment should not be entered against the defaulting defendant until the matter has
17 been adjudicated with regard to all defendants." *Nielson v. Chang*, 253 F.3d 520, 532
18 (9th Cir. 2001); *Societe d'Equipments Internationaux Nigeria, Ltd v. Dolarian*
19 *Capital, Inc.*, No. 115CV01553DADSKO, 2016 WL 6868023, at *2 (E.D. Cal. Nov.
20 21, 2016) (cumulating cases to show that *Frow* remains good law in the Ninth
21 Circuit). This is because it would be "absurd" for a court to enter inconsistent
22 judgments against two defendants that essentially engaged in the same course of
23 conduct. See *Frow*, 82 U.S. at 554; *Vaughn v. Wells Fargo Bank, N.A.*, No.
24 CV1205453DMGJEMX, 2012 WL 12893781, at *2 (C.D. Cal. Nov. 29, 2012)
25 ("[C]ourts find that it would be 'incongruous and unfair' to allow a plaintiff to prevail
26 against defaulting defendants on a legal theory later rejected with respect to an
27 answering defendant 'in the same action.'" (quoting *Garamendi v. Henin*, 683 F.3d
28 1069, 1082–83 (9th Cir. 2012))).

1 While this common law rule was originally limited to jointly-liable co-
2 defendants, in recent years, the Ninth Circuit has extended the rule to encompass
3 “similarly situated” parties. *Garamendi*, 683 F.3d at 1082–83. A defaulting party is
4 similarly situated to an answering party when the case against both parties rests on the
5 “same legal theory.” *Id.*; see also *Vaughn*, 2012 WL 12893781, at *2 (finding parties
6 to be similarly situated where causes of action were common to defaulting and
7 answering defendants and all defendants were liable for the full amount of damages);
8 *Mason v. City of Lake Forest Park*, No. C13-0676-JCC, 2014 WL 4093933, at *4
9 (W.D. Wash. Aug. 18, 2014) (denying motion for default judgment where “three of
10 the four” claims were alleged against “all defendants,” some of whom answered and
11 some of whom did not); *Societe d’Equipments*, 2016 WL 6868023, at *3 (finding that
12 parties were “similarly situated” where “the claims, facts, and legal issues asserted in
13 the complaint relative to each of the two defendants” were similar).

14 This case has the potential to implicate the common law rule annunciated in
15 *Frow* because one of the defendants has answered the complaint (Union) and the other
16 has not (Manjeet). See *Nielson*, 253 F.3d at 532. As such, the Court considers
17 whether Defendants are jointly liable or similarly situated and whether there is a risk
18 of inconsistent judgments.

19 **A. Whether Defendants are Jointly Liable or Similarly Situated**

20 To begin, Union and Manjeet are likely to be held jointly liable for any
21 infringement because it appears they were part of a distribution chain that produced
22 infringing goods. (See Knox Decl. ¶¶ 3–4); see also *Adobe Sys. Inc. v. Blue Source*
23 *Grp., Inc.*, 125 F. Supp. 3d 945, 973 (N.D. Cal. 2015) (cumulating cases for the
24 proposition that members of a distribution chain involving infringing goods may be
25 held jointly liable for infringement).

26 Further, Defendants are similarly situated. Defendants are subject to the same
27 two causes of action and are liable for the full range and amount of damages. See
28 *Vaughn*, 2012 WL 12893781, at *2. Indeed, the complaint itself makes no distinction

1 between the actions of Union and Manjeet. (*See e.g.*, Compl. ¶¶ 12–13, 16.) Adding
2 in the facts from the Knox declaration does little to change this—Defendants were
3 allegedly on opposite ends of the same transaction involving infringing goods. (Knox
4 Decl. ¶¶ 3–4.)

5 **B. Whether There is a Risk of Inconsistent Judgments**

6 As discussed above, in reviewing a motion for default judgment, the Court must
7 take the allegations in the complaint as true. *TeleVideo Sys.*, 826 F.2d at 917–18. As
8 such, the Court must take the allegation in the complaint that Manjeet engaged in
9 various forms of infringing conduct as true. (*See* Compl. ¶¶ 12–13.)

10 Union, on the other hand, has answered the complaint and denied that any
11 infringing conduct occurred. (Answer ¶¶ 11–30.) Union has also asserted a number
12 of affirmative defenses, including that Plaintiff cannot establish authorship or the
13 requisite level of originality for the work in question. (*Id.* ¶¶ 32–33, 38.) Union
14 further asserts the affirmative defenses of fraud on the copyright office and unclean
15 hands. (*Id.* ¶¶ 32, 41.)

16 These affirmative defenses would apply equally to Union and Manjeet. For
17 instance, if Union proved that there was a lack of originality and by extension that
18 Plaintiff’s copyright had been improperly granted by the copyright office, then there
19 would be no basis for liability against either defendant. *N. Coast Indus. v. Jason*
20 *Maxwell, Inc.*, 972 F.2d 1031, 1033 (9th Cir. 1992) (“Originality is the indispensable
21 prerequisite for copyrightability.”). If such a scenario came to pass, it would not be
22 equitable to allow a default judgment to stand against Manjeet. *See Vaughn*, 2012 WL
23 12893781, at *2 (“[C]ourts find that it would be ‘incongruous and unfair’ to allow a
24 plaintiff to prevail against defaulting defendants on a legal theory later rejected with
25 respect to an answering defendant ‘in the same action.’” (quoting *Garamendi*, 683
26 F.3d at 1082–83)). While it is unclear whether Union will ultimately prevail on any of
27 its affirmative defenses, the Court finds that the best course of action is to deny the
28 pending motion for default judgment at this time. Plaintiff may refile this motion at

1 the conclusion of the proceedings against Union. *See Garamendi*, 683 F.3d at 1083
2 (noting that district courts should adjudicate defaults after adjudicating the case of
3 answering defendants); *see also Guotai USA, Co., Ltd. v. J&Company, LLC*, No.
4 216CV06948ODWPLA, 2017 WL 1740014, at *5 (C.D. Cal. May 3, 2017).

5 **V. CONCLUSION**

6 For the foregoing reasons, the Court **DENIES** Plaintiff's motion for default
7 judgment *without prejudice*. (ECF No. 17.) Plaintiff may refile its motion at the
8 conclusion of the proceedings against Union.

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10 **IT IS SO ORDERED.**

11 May 24, 2017

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14 **OTIS D. WRIGHT, II**
15 **UNITED STATES DISTRICT JUDGE**
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